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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,298	02/17/2004	Leo J. Romanczyk JR.	1010/101US14	9721
32260	7590	05/09/2005	EXAMINER	
SOLOLA, TAOFIQ A				
ART UNIT		PAPER NUMBER		
1626				

DATE MAILED: 05/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/780,298	ROMANCZYK ET AL.
<b>Examiner</b>	<b>Art Unit</b>	
Taofiq A. Solola	1626	

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on \_\_\_\_\_.  
2a)  This action is **FINAL**.                            2b)  This action is non-final.  
3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 34-73 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 34-73 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 12 July 2004 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_  
5)  Notice of Informal Patent Application (PTO-152)

Claims 34-73 is pending in this application.

***Double Patenting Rejection***

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 34-73 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 209-230 of allowed Application No. 10/127,817. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

In both cases, the claims are drawn to methods of using the same compound for treating atherosclerosis, thrombosis, heart attack, stroke or vascular circulation problem (in 10/127,817), and for anti-platelet therapy in the instant application. However, according to the specification, page 10, lines 31-32, platelet aggregation is involved in the progression of atherosclerosis. Also, on page 14, lines 32-35, the specification discloses that aggregation of platelets leads to thrombus formation (thrombosis), which is responsible for "acute myocardial infarction, unstable angina and percutaneous coronary intervention", and "anti-platelet therapy decrease[s] the incidence of primary and secondary coronary events." Therefore, the claims in the instant application and 10/127,817, are drawn to the same subject matter.

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Claims 34-73 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 209-224 of allowed Application No. 10/770,969. This is a

provisional double patenting rejection since the conflicting claims have not in fact been patented.

In 10/770,969, the claims are drawn to methods of using epicatechin and/or catechin for treating atherosclerosis, thrombosis, heart attack, stroke or vascular circulation problem. In the instant application, the claims are drawn to method of using procyanidin for anti-platelet therapy. However, according to the specification, page 2, lines 20-22, "procyanidin [is] selected from epicatechin, catechin, procyanidin B-2, procyanidin oligomers 2-12, preferably 2-14 or 4-12, more preferably 3-12 and most preferably 5-12, procyanidin B-5, procyanidin A-2 and procyanidin C-1." On page 10, lines 31-32, the specification further states that platelet aggregation is involved in the progression of atherosclerosis. Also, on page 14, lines 32-35, the specification discloses that aggregation of platelets leads to thrombus formation (thrombosis), which is responsible for "acute myocardial infarction, unstable angina and percutaneous coronary intervention", and "anti-platelet therapy decrease[s] the incidence of primary and secondary coronary events." Therefore, the claims in the instant application and 10/770,969, are drawn to the same subject matter.

***Telephone Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Taofiq A. Solola, PhD., JD., whose telephone number is (571) 272-0709.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Joseph McKane, can be reached on (571) 272-0699. The fax phone number for this Group is (571) 273-8300.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-1600.

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TAOFIQ SOLOLA  
PRIMARY EXAMINER  
Group 1626

May 4, 2005